

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/821,046	BEDDOE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAMES RUTTEN	2192	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/26/08.
2. ☒ The allowed claim(s) is/are 1-6,11-26,28,29 and 31-49 (renumbered 1-43).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date <u>6/19/08</u></li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____.</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
|---|--|

/Tuan Q. Dam/  
Supervisory Patent Examiner, Art Unit 2192

### **DETAILED ACTION**

1. This action is in response to Applicant's submission filed 8/26/08, responding to the 3/26/08 Office action which detailed the rejection of claims 1-45. Claims 1, 11, 14, 16, 19, 22, 24, 26, 32, 37, 39, and 40 have been amended, claims 7-10 have been canceled, and new claims 46-49 have been added. Claims 1-6 and 11-49 remain pending in the application and have been fully considered by the examiner.

### ***Response to Arguments/Amendments***

2. The amendment to the preamble of claims 1 and 16 are presented to overcome the rejection of claims 1-23 under 35 U.S.C. § 101. However, an examiner's amendment to the claims is made below which obviates the rejection, which is likewise withdrawn.

3. Applicant's arguments, see bottom of page 17 - top of page 18, filed 8/26/08, with respect to the 35 U.S.C. § 103(a) rejection of claim 30, have been fully considered and are persuasive. The rejection of claim 30 has been withdrawn.

4. Applicant's further arguments have been considered but are moot in view of the following examiner's amendment.

### **EXAMINER'S AMENDMENT**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kevin Zilka, Reg. No. 41,429 on 11/5/08. In the interview, it was agreed that amendments to the independent claims to include the subject matter of claim 30 would provide patentable subject matter.

The application has been amended as follows:

#### AMENDMENTS TO THE CLAIMS

Please amend claims 1, 16, 24, 28, 29, 31, 32, 39, and 44, and cancel claims 27 and 30 as follows:

Claim 1 (Currently Amended): In line 1, after "system including a" delete "tangible computer readable medium" and insert "node capable of executing computer code".

At the end of the claim in line 22 after "identification tests" insert ";" along with the following new clauses:

wherein a list of open ports on the network node is generated and, based on the list of open ports, another identification of which operating system is executed by the network node and another confidence level indicating a degree to which the other identification is deemed accurate are generated, wherein making the overall identification of the operating system is further based on the other identification and the other confidence level; and

wherein generating the list of open ports comprises retrieving a previously constructed list of open ports

Claim 16 (Currently Amended): In line 1, after "system including a" delete "tangible computer readable medium" and insert "node capable of executing computer code".

Also, at the end of the claim in line 17, after "identification tests" insert ";" along with the following new clauses:

wherein a list of open ports on the network node is generated and, based on the list of open ports, another identification of which operating system is executed by the network node and another confidence level indicating a degree to which the other identification is deemed accurate are generated, wherein making the overall identification of the operating system is further based on the other identification and the other confidence level; and

wherein generating the list of open ports comprises retrieving a previously constructed list of open ports

Claim 24 (Currently Amended): At the end of the claim in line 34, after "identification tests" insert ";" along with the following new clauses:

wherein a list of open ports on the network node is generated and, based on the list of open ports, another identification of which operating system is executed by the network node and another confidence level indicating a degree to which the other identification is deemed accurate are generated, wherein making the overall identification of the operating system is further based on the other identification and the other confidence level; and

wherein generating the list of open ports comprises retrieving a previously constructed list of open ports

Claim 27 (Canceled)

Claim 28 (Currently Amended): In line 1, after "Claim" delete "27" and insert "24".

Claim 29 (Currently Amended): In line 1, after "Claim" delete "27" and insert "24".

Claim 30 (Canceled)

Claim 31 (Currently Amended): In line 1, after "Claim" delete "27" and insert "24".

Claim 32 (Currently Amended): In line 10, after "identified by the" delete "detected" and insert "selected".

Also, at the end of the claim in line 16, after "tests" insert ";" along with the following new clauses:

wherein a list of open ports on the network node is generated and, based on the list of open ports, another identification of which operating system is executed by the network node and another confidence level indicating a degree to which the other identification is deemed accurate are generated, wherein making the overall identification of the operating system is further based on the other identification and the other confidence level; and

wherein generating the list of open ports comprises retrieving a previously constructed list of open ports

Claim 39 (Currently Amended): At the end of the claim in line 23, after "tests" insert ";" along with the following new clauses:

wherein a list of open ports on the network node is generated and, based on the list of open ports, another identification of which operating system is executed by the network node and another confidence level indicating a degree to which the other identification is deemed accurate are generated, wherein making the overall identification of the operating system is further based on the other identification and the other confidence level; and

wherein generating the list of open ports comprises retrieving a previously constructed list of open ports

Claim 44 (Currently Amended): In line 2, after "generating" delete "a" and insert "the".

## **REASONS FOR ALLOWANCE**

6. The following is an examiner's statement of reasons for allowance:

The examiner indicated that this application would be in condition for allowance if the independent claims 1, 16, 24, 32, and 39 are amended to include the features of claim 30 (including the features of parent claim 27). The above features, taken in combination with all remaining features of the independent claim are not taught or suggested by the prior art of record, as suggested by Applicants on pages 17-18 filed 8/26/08. The applicant agreed to amend

Art Unit: 2192

the independent claims 1, 16, 24, 32, and 39 as indicated by the examiner. The distinctions provided by the independent claims apply equally to all dependent claims. Thus all pending claims 1-6, 11-26, 28-29, and 31-49 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES RUTTEN whose telephone number is (571)272-3703. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

Art Unit: 2192

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. R./

Examiner, Art Unit 2192

/Tuan Q. Dam/

Supervisory Patent Examiner, Art Unit 2192